

Formal Action # 94-77 - I

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

John Bunch, individually, and
all businesses owned or operated by
John Bunch,
Respondents.

SUPPLEMENTAL ASSURANCE OF VOLUNTARY COMPLIANCE

THIS SUPPLEMENTAL ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by John Bunch ("BUNCH"), to the State of Tennessee, by and through John Knox Walkup, Attorney General and Reporter ("Attorney General"), at the request of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (the "Division").

WITNESSETH

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division, in conjunction with the Attorney General, have conducted an investigation of the business practices of BUNCH, which includes the providing of advertisements, usually signs, to mostly

small businesses at prescribed locations. As a result of the investigation, the Division and the Attorney General are of the opinion that certain acts and practices of BUNCH have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 et seq. (the "Act").

B. BUNCH neither admits nor denies any wrongdoing.

C. BUNCH desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the costs and expenses of litigation.

NOW, THEREFORE, acting pursuant to Tennessee Code Annotated section 47-18-107, BUNCH gives, and the Attorney General accepts, the following assurances:

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over BUNCH for the purpose of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling Petitioner to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including the enforcement of compliance therewith and penalties for violation(s) thereof. BUNCH agrees to pay all court costs and attorneys' fees associated with any petitions to enforce any provision of this Assurance and Agreed Order against BUNCH.

2. VENUE

2.1 Pursuant to Tennessee Code Annotated section 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance and Agreed Order is solely in the Chancery Court of Davidson County, Tennessee.

3. PARTIES

3.1 BUNCH warrants and represents that He is the proper party to this Assurance and Agreed Order.

3.2 This Assurance and Agreed Order shall apply to BUNCH, whether acting through any corporation, subsidiary, affiliate, division or other device, or through any officer, director, employee, agent, successor, assign, or any other person acting in concert or participating with him.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed by BUNCH that immediately upon the execution of this Assurance and Agreed Order, He shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein.

4.1 BUNCH shall not engage in any unfair or deceptive acts or practices in the conduct of its business. BUNCH shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 et seq., including but not limited to section 47-18-104(b)(27) which prohibits any and all unfair and/or deceptive acts or practices. This Assurance is not intended to supersede the previous Assurance entered into on January 7, 1994; rather it is meant to supplement and complement it.

4.2 BUNCH shall not limit the damages or recovery to which consumers may be entitled under Tennessee law, except as otherwise limited by law.

(As used herein the term "consumer" shall include any person, business, corporation, individual, customer, government agency, partnership, corporation, trust, estate, incorporated or unincorporated associations, and any other legal or commercial entity however organized.)

4.3 BUNCH shall fully and timely respond in writing to all consumer complaints or inquiries within thirty (30) business days of receipt of said complaints or inquiries. Without limiting the scope of this provision, BUNCH shall be specifically prohibited from refusing to accept mail from the Division of Consumer Affairs, the State of Tennessee, Better Business Bureaus or consumers attempting to complain directly to BUNCH.

4.4 BUNCH shall notify the Tennessee Division of Consumer Affairs thirty (30) business days prior to (1) any creation or start-up of a new business; (2) any change in the current businesses; (3) the sale of any of its businesses; or (4) any change in address of any of its businesses so that the Division may maintain a current and correct address to forward consumer complaints for resolution.

4.5 BUNCH shall not directly or indirectly solicit, promote, advertise or represent that BUNCH can or will provide goods or services to a consumer when in fact, such is not the case.

4.6 BUNCH shall not directly or indirectly, solicit, promote, advertise or represent that BUNCH can or will provide goods or services which will be physically located on property not owned by BUNCH unless BUNCH has the written authorization from the owner of the property where the goods or services will be placed. Without limiting the scope of this provision, the authorization must include at a minimum the following: (a) the date of the approval, (b) the full name, address and telephone number of the person authorizing the use of the property, (c) the person's title with the company authorizing the use of the property, (d) the length of the authorization for use of the property, (e) the specifics of how the property can be used, (f) a notification requirement to terminate the right to use the property, (g) the full address of the person and the company he/she represents, (h) the name of BUNCH's employee that obtained the authorization, and (i) the proper signatures of the authorizing person, John Bunch and the employee of BUNCH who negotiated the authorization.

4.7 BUNCH shall not directly or indirectly, state, solicit, promote, advertise or represent that BUNCH can or will provide goods or services for a certain period of time unless in fact BUNCH can or will provide the goods or services for the entire stated period without exception.

4.8 Within ten (10) business days of receipt of a request for a refund, BUNCH shall be required to provide a full refund of the full amount or purchase price paid for any goods or services that for any reason BUNCH is unable to deliver as promoted and represented. The refund shall be in the form of a cashier's check to the consumer via first class mail postage paid through the U.S. Postal Service, and a copy of said check shall be provided to the Division upon request within ten (10) days.

4.9 BUNCH shall establish procedures to ensure that no BUNCH employee will begin soliciting consumers until they have been properly trained to comply with the Act and this Assurance.

4.10 BUNCH shall be required to provide a copy of all consumer complaints received by BUNCH from any source other than the Division to the Division within thirty (30) business days of receipt of the complaint. BUNCH shall also be required to provide a response to the complaint in conformity with paragraph 4.3 of this Assurance. Without limiting the scope of this provision, consumer complaints shall include telephone calls or other inquiries received by BUNCH or its employees. In all situations in which the consumer has not written a complaint, BUNCH shall be required to provide the name, address, telephone number, a brief description of the complaint and the amount of any requested refund to the Division upon request.

4.11 BUNCH shall be required to provide each and every consumer that purchases goods or services with a receipt for the goods or services. Without limiting the scope of this provision, the receipt shall include at a minimum the following: (a) the name, address and telephone number of the consumer, (b) the full name of the sales person, (c) a detailed description of the goods or services sold, (d) the length of time that the goods or services will be provided, (e) a detailed description of the physical location that goods or services will be provided, including the street address, (f) the name, title, telephone number and address of the person authorizing use of the physical location and the length of the authorization where the goods or services will be provided, (g) the refund policy, (h) a statement that if a consumer has a complaint he/she can write the Division of Consumer Affairs, 500 James Robertson Parkway, Nashville, TN 37243, to file a complaint, and the Division will mediate the complaint, (i) the date of the purchase, and (j) the total amount paid for the services.

4.12 BUNCH shall be prohibited from accepting or depositing a consumer's payment to BUNCH for goods or services until the goods or services are actually delivered as promoted and represented unless BUNCH deposits the consumer's payment into an escrow account until goods or services are actually delivered as promoted and represented.

4.13 BUNCH shall be prohibited from engaging in any act or practice which would violate any provision of this Assurance.

4.14 BUNCH shall be prohibited from engaging in any act or practice that would violate any provision of the BUNCH Assurance of Voluntary Compliance entered in Davidson County Chancery Court on January 7, 1994.

5. REPRESENTATIONS AND WARRANTIES

5.1 BUNCH represents and warrants that he is unable to refund monies to consumers.

5.2 BUNCH represents and warrants that he is unable to pay refunds because (1) he is no longer in the business of offering advertisements to consumers as alleged in the State's Petition; (2) he has no assets, and (3) he is under house arrest, with leave to only attend church and his current employment.

5.3 BUNCH acknowledges that the State expressly relies upon these representations and warranties, and that if they are false, misleading, deceptive, unfair or inaccurate, in any way, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

5.4 The acceptance of this Assurance and Agreed Order by the State of Tennessee shall not be deemed approval of any of BUNCH's advertising or business practices by the State or any of its agencies or departments.

5.5 The acceptance of this Assurance and Agreed Order by the State of Tennessee shall not be deemed a waiver of the State's right to seek restitution for any consumer that has complained to BUNCH for any reason.

5.6 BUNCH represents and warrants that the execution and delivery of this Assurance and Agreed Order is His free and voluntary act, that this Assurance and Agreed Order is the result of good faith negotiations, and that BUNCH agrees that this Assurance and Agreed Order and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance and Agreed Order in good faith.

5.7 BUNCH will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance and Agreed Order or for any other purpose which would otherwise circumvent any part of this Assurance and Agreed Order or the spirit or purposes of this Assurance and Agreed Order.

5.8 This Assurance and Agreed Order may only be enforced by the parties hereto.

5.9 The titles and headers to each section of this Assurance and Agreed Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of this Assurance and Agreed Order.

5.10 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

5.11 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to

the resolution of the matters set forth in the State's petition.

5.12 Nothing in this Assurance and Agreed Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance and Agreed Order shall not bar the State or other governmental entity from enforcing laws, regulations or rules against BUNCH or seeking restitution for parties injured by BUNCH.

5.13 This Assurance and Agreed Order shall be binding and effective against BUNCH upon BUNCH's execution of the Assurance and Agreed Order.

5.14 BUNCH has been advised of his right to legal counsel in connection with this matter. If BUNCH declines to obtain the assistance of legal counsel, BUNCH has expressly waived his right to counsel by executing this Assurance and Agreed Order.

6. PENALTY FOR FAILURE TO COMPLY

6.1 BUNCH understands and acknowledges that pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Assurance and Agreed Order is punishable by civil penalties of not more than Two-Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

6.2 BUNCH understands that upon execution and filing of this Assurance and Agreed Order, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

7. CIVIL PENALTIES

7.1 BUNCH shall pay the sum of Five-Hundred Dollars (\$500.00) to the State of Tennessee as a civil penalty for BUNCH's acts and/or practices described. This five-hundred dollar sum shall be in addition to and made immediately upon BUNCH's full satisfaction of the outstanding monies owed the State by BUNCH from the BUNCH Assurance of Voluntary Compliance entered in Davidson County Chancery Court on January 7, 1994, where BUNCH agreed to pay the Attorney General ten thousand dollars (\$10,000.00).

8. COMPLIANCE WITH ALL LAWS

8.1 Nothing in this Assurance and Agreed Order shall be construed as relieving BUNCH of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance and Agreed Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

9. APPLICATION OF ASSURANCE AND AGREED ORDER TO BUNCH AND HIS SUCCESSORS

9.1 BUNCH agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance and Agreed Order shall apply to BUNCH, to each of his officers, directors, partners, subsidiaries, affiliates, managers, parents, related entities, agents, assigns, representatives, employees, successors, sales staff and any and all other persons or entities acting directly or indirectly on his behalf.

10. MONITORING FOR COMPLIANCE

10.1 Upon request, BUNCH shall provide books, records or documents to the Attorney General or Division at any time, and further, to informally, or formally under oath, provide testimony or other information to the Attorney General or Division relating to compliance with this Assurance and Agreed Order. BUNCH shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at such other location within the State of Tennessee as is mutually agreeable, in writing, to BUNCH and the Attorney General. This shall in no way limit the Attorney General or the Division's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

11. PRIVATE RIGHT OF ACTION

11.1 Nothing in this Assurance and Agreed Order shall be construed to affect any private right of action that a consumer may hold against BUNCH.

12. NOTIFICATION TO PETITIONER

12.1 For two (2) years following execution of this Assurance and Agreed Order, BUNCH shall notify the Attorney General, c/o Consumer Protection Division, 500 Charlotte Avenue, Nashville, Tennessee 37243-0491, in writing at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in BUNCH's status that may effect compliance with obligations arising out of this Assurance and Agreed Order.

13. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

13.1 BUNCH shall pay the sum of Five-Hundred Dollars (\$500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. This five-hundred dollar sum shall be in addition to and made immediately upon BUNCH's full satisfaction of the outstanding monies owed the State by BUNCH from the BUNCH Assurance of Voluntary Compliance entered in Davidson County Chancery Court on January 7, 1994, where BUNCH agreed to pay the Attorney General ten-thousand dollars (\$10,000.00).

14. FORBEARANCE ON EXECUTION AND DEFAULT

14.1 No execution or garnishment on the monetary portion of this Assurance and Agreed Order shall issue so long as BUNCH makes payment in accordance with paragraph 14.2 herein. In the event BUNCH fails to make any such payment within thirty (30) days of its due date, the entire balance of this Assurance and Agreed Order then remaining may be collected by execution, garnishment or other legal process, together with interest, pursuant to Tennessee Code Annotated section 47-14-121, from the date of entry of this Assurance and Agreed Order. BUNCH agrees to pay attorneys' fees and costs associated with any such collection efforts.

14.2 Payment shall be made to the Consumer Protection Division, Office of Attorney General as follows: \$250.00 due November 1, 1998 and the first of each month thereafter.

14.3 BUNCH shall be required to retain proof of all payments to the State in the form of canceled checks for each payment for a full twenty-four months following their final payment to the State. Respondent shall provide proof of all payments to the State within thirty days of a request for such information.

14.4 BUNCH agrees that any and all such sums are non-dischargeable in a bankruptcy proceeding given the same are punitive in nature.

15. PAYMENT OF COURT COSTS

15.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by BUNCH. No costs shall be taxed to Petitioner as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to Petitioner.